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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC

In re Applications of)	MM Docket No. 93-107
DAVID A. RINGER)	File No. BPH-911230MA
ASF BROADCASTING CORP.)	File No. BPH-911230MB
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC
SHELLEE F. DAVIS)	File No. BPH-911231MA
OHIO RADIO ASSOCIATES)	File No. BPH-911231MC

For Construction Permit for an
FM Station on Channel 280A in
Westerville, OH

To: Administrative Law Judge
Walter C. Miller

**REPLY TO OPPOSITION TO MOTION TO ENLARGE THE ISSUES
AGAINST DAVID A. RINGER**

Shellee F. Davis ("Davis"), by her attorney, hereby submits her Reply to the "Opposition to Motion to Enlarge Issues" filed by David A. Ringer ("Ringer") in this proceeding.¹ With respect thereto, the following is stated:

As Davis established in her Motion against Ringer, Ringer's proposed budget for the construction and initial operation of his proposed station states that he will need \$201,880 to construct and operate his station for three months. As Ringer concedes, although his Business Plan includes a budgetary figure of \$50,000 for "Miscellaneous Costs," it does not include line-item entries to accommodate (1) his directional antenna proposal, or (2) his auxiliary power

¹ Ringer filed his Opposition on September 7, 1993. This Reply is being filed five days after the opposition was filed (as computed under Section 1.4 of the Commission's Rules), as permitted under Section 1.294(c). This Reply therefore is timely filed.

30

proposal. Evidence submitted by Davis indicates that the cost of these two items alone would exceed his \$50,000 reserve for "Miscellaneous Expenses" insofar as the Jampro Antenna specified in his application has a cost of \$21,450, and the estimated cost of his auxiliary power generating equipment has a predictable cost of \$30,000. Moreover, although the terms of the "Mid-Ohio letter" on which Ringer is relying plainly states only that "some or perhaps all" of the equipment on the inventory list will be made available, nevertheless, Ringer's budget includes no provision for the purchase of replacement equipment for the four equipment categories specified by the Commission in its FCC Form 301.² These omissions on the part of Ringer collectively result in a massive shortfall with respect to the financial resources available to Ringer, and consequently necessitate the addition of a financial issue against Ringer.

Ringer concedes that these items have been omitted, but argues that Ringer's provision for "\$50,000" Miscellaneous Costs is sufficient to accommodate these omissions. He concedes that the cost of a Jampro Antenna would be \$21,450, but claims that the cost for emergency power generating equipment would be only \$12,274. Ringer is attempting to establish a moving target. At his deposition, the following exchange occurred:

Q: ...Did you make provision anywhere in your Business Plan, otherwise for a cost of auxiliary generators?

A: We have a miscellaneous expense account of \$50,000.

² In contrast, although Davis is proposing to use the Mid-Ohio equipment, she has prepared a "worst case" budget which allows funds sufficient to purchase replacement equipment for the Mid-Ohio equipment, in the event the Mid-Ohio equipment becomes unavailable prior to the execution of a lease between Davis and Mid-Ohio, along with a \$50,000+ financial cushion.

Q: As of December 1991, did you have any understanding of how much auxiliary generators would cost?

A: From my own experience, in a used market, \$30,000 or less.

TR 32 (Attachment 1). Nevertheless, Ringer's Opposition now includes a price quote of only \$12,274 for two power generators. Those generators, however, are of inadequate power, and will not generate sufficient power to maintain Ringer's proposed operations. Ringer will be using a Harris HT 3.5 transmitter with an output power of 4.3 kW. The power consumption for his transmitter alone will be at least 7.5 kW (and additional power would be needed to maintain tower lighting, and power for equipment racks at the transmitter). See Attachment 2. Similarly, Ringer's 5 kW generator would be insufficient for use at his proposed studio location. See Attachment 3. Therefore, Ringer's "5 kW" power supply will not accommodate his auxiliary power proposal. Ringer apparently has misleadingly "low-balled" the auxiliary power estimates by providing to the Commission price estimates for equipment inadequate to meet his power needs. Therefore, Mr. Ringer's speculation, Harris' quotation, and Buckeye's quotations all coincide far closer those Ringer claimed; even using the Buckeye quotation for the cost of two 15 kW emergency power generators, it can be estimated that it will cost approximately \$16,448 for the generators alone which, when coupled with the \$3000 figure Ringer concedes may be appropriate for installation (Ringer Opposition at 5), it can be estimated that it will cost approximately \$19,448 for Ringer to implement his emergency power generating proposal. That figure, when coupled with the \$21,450 previously unbudgeted Jampro Antenna cost, borders the outer limits of Ringer's claimed \$50,000 "Miscellaneous" fund.

The reserve is totally exhausted after also factoring into the requisite analysis the fact that the budget also fails to include sufficient funds for Ringer to purchase or confidently

obtain the other equipment necessary for the operation of his station -- specifically, the equipment dealt with in the Mid-Ohio letter. When including that omission, it becomes clear that Ringer has never been financially qualified to construct and operate his proposed station.

Ringer argues only, without support, that he has "reasonable assurance" of the availability of the equipment, which "is all that the Commission demands of lease commitments." Ringer Opposition at 5 ¶ 6. Ringer again is incorrect. A standard "turn-key" equipment lease is attached hereto as Attachment 4. As seen, in a standard equipment lease, a leasing company commits to provide certain specific equipment in return for certain compensation. In such a standard arrangement, a lessor is not left to "guess" "which if any" or whether "some or all" of the equipment will, in fact, be made available. By the plain terms of the Mid-Ohio letter, the Mid-Ohio letter provides far less than the assurances contained in a typical leasing arrangement -- while Mid-Ohio agrees to lease "equipment," instead of stating which equipment it is willing to lease, the letter states:

The equipment would include some or perhaps all of the equipment itemized in the inventory accompanying this inventory. Failure to lease all of the equipment listed in the inventory will not result in a reduced lease package price.

Attachment 5 (emphasis added).

In fact, to confirm the accuracy of this interpretation of the December 1991 Mid-Ohio Letter, the author of the Mid-Ohio letter recently was contacted. As seen in Attachment 6, Mr. Fry confirms that Mid-Ohio has no provided no assurances of necessarily leasing all of the equipment to any applicant. As Mr. Fry, Mid-Ohio's Authorized Agent states in his Declaration issued under penalty or perjury, while valid assurances have been provided by Mid-Ohio for lease of the Mid-Ohio tower, transmitter builder and studio, the same cannot be said

for the tangible personal property owned by Mid-Ohio:

In regard to the personal property, Mid-Ohio provided no assurance concerning what itemized equipment in the inventory accompanying the correspondence would be available to the successful applicant.

Attachment 6.

Thus, the facts are as Davis has known all along -- namely, that while it is possible that the Mid-Ohio equipment will be made available by lease to Ringer or another successful applicant at such time as the construction permit in this proceeding is awarded, no assurances of that availability yet exist.³ Instead of including funds in his budget sufficient to accommodate the possible unavailability of all of the equipment for the operation of the station, Ringer cavalierly has wrongly proceeded under the assumption that "all" equipment has been "committ[ed]" to him (or any other successful applicant), and consequently, no additional funds have been budgeted by him for the purchase or lease of funds to ensure his ability to successfully construct and operate his proposed station.

As a result of all of the foregoing, it must be concluded that a prima facie case has been presented indicating that Ringer did not possess a "reasonable assurance" of the availability of sufficient funds for the construction and initial operation of his proposed station at the time he filed his application (or thereafter), which also necessitates the addition of the requested issue. It is well established that an applicant is not free to ignore the express

³ In contrast, although Davis is proposing to use the Mid-Ohio equipment, she has prepared a "worst case" budget and has made arrangements for the availability of funds sufficient to purchase, if necessary, new equipment to replace the Mid-Ohio equipment in the event the Mid-Ohio equipment becomes unavailable prior to the execution of a lease between Davis and Mid-Ohio. Davis' budget also provides for a \$50,000+ financial cushion.

conditions or limitations imposed on property by an owner. Intermart Broadcasting Gulf Coast, Inc., 8 FCC Rcd 2937, 2939 ¶ 11 (Rev. Bd. 1993), citing, South Florida Broadcasting Co., Inc., 57 R.R.2d 495, 500 (Rev. Bd. 1984). Ringer repeatedly argues that his budget estimates were prepared in "good faith." Ringer's "good faith," however, is not at issue -- as the Review Board has observed:

Reasonable assurance is an objective standard. An applicant's subjective belief...is not sufficient to meet the standard, although it may reflect on the applicant's intent when certifying to [its] application. See generally Janice Fay Surber, 5 FCC Rcd at 6159 ¶ 59.

Isis Broadcast Group, 7 FCC Rcd 5125, 5130 n.17 (Rev. Bd. 1992). Davis pointedly has not requested the addition of an issue calling into question Ringer's character or veracity. That fact, however, nevertheless does not negate the necessity for adding a financial issue in this proceeding.

In short, Ringer's budget contains a series of admitted deficiencies, which individually and in the aggregate raise serious questions concerning the adequacy of his financial proposal and ultimately the adequacy of his financial qualifications. An applicant must be financially qualified at the time it files its application. Aspen FM, Inc., 6 FCC Rcd 1602, 1603 (1991). No new financial proposal can be accepted absent the submission of a petition for leave to amend pursuant to 47 C.F.R. § 73.3522(b) demonstrating good cause. Texas Communications Limited Partnership, 6 FCC Rcd 3186, 3187 ¶ 9 (1991). As the Mass Media Bureau recently confirmed, an applicant also cannot modify its proposed budget for the construction of its station without prior consent. KR Partners, 8 FCC Rcd 1748, 1949 ¶ 5 (Chief, Audio Services Div. 1993). Here, since Ringer "knew or should have known" that his

financial proposal was not sufficient, he would be unable to demonstrate good cause for any amendment to his financial proposal at this late date. The facts presented in Davis' original Motion and herein therefore raise a matter clearly of potential decisional significance in this case, and warrants the addition of the requested issue.

WHEREFORE, it is respectfully requested that the Motion to Enlarge Issues Against David A. Ringer filed by Shellee F. Davis be granted, and that the issues be enlarged in this proceeding against David A. Ringer, as requested.

Respectfully requested,

SHELLEE F. DAVIS

By:

Dan J. Alpert

1250 Connecticut Ave.
7th Floor
Washington, DC 20036
(202) 637-9158

September 17, 1993

Her Attorney

ATTACHMENT 1

COPY

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In re Applications of:

DAVID A. RINGER

ASF BROADCASTING CORPORATION

WILBURN INDUSTRIES, INC.

KYONG JA MATCHAK

**WESTERVILLE BROADCASTING
COMPANY LIMITED PARTNERSHIP**

OHIO RADIO ASSOCIATES, INC.

**For a Construction Permit for
a New FM Station on Channel
280A at Westerville, Ohio**

MM DOCKET NO. 93-107

File No. BPH-911230MA

File No. BPH-911230MB

File No. BPH-911230MC

File No. BPH-911230MF

File No. BPH-911231MB

File No. BPH-911231MC

Washington, D.C.

Friday, July 16, 1993

Deposition of

DAVID A. RINGER

**a witness of lawful age, taken on behalf of the Applicants
in the above-entitled action before Oveda V. Hancock, a
Notary Public in and for the District of Columbia, pursuant
to Notice, in the offices of Smithwick & Belendiuk, 1990 M
Street, N.W., Suite 510, Washington, D.C. 20036.**

BETA REPORTING COMPANY

(703) 684-BETA

(202) 347-2382

1-800-522-BETA

1 Q Okay. Could you tell us on the record what you
2 believe to be an auxiliary generator on this inventory
3 list?

4 A The IVONICS FMX generator, item number one, or it
5 says "T IVONICS FMS Generator 1"

6 Q Did you ever make any specific inquiry of Mr. Fry
7 or anybody associated with WBBY as to whether your
8 assumption was correct, that this included an auxiliary
9 generator?

10 A No, no.

11 Q Would you agree that -- strike that question.
12 Did you make provision anywhere in your Business Plan,
13 otherwise for a cost of auxiliary generators?

14 A We have a miscellaneous expense account of
15 \$50,000.

16 Q As of December 1991, did you have any
17 understanding of how much auxiliary generators would cost?

18 A From my own experience, in a used market, \$30,000
19 or less.

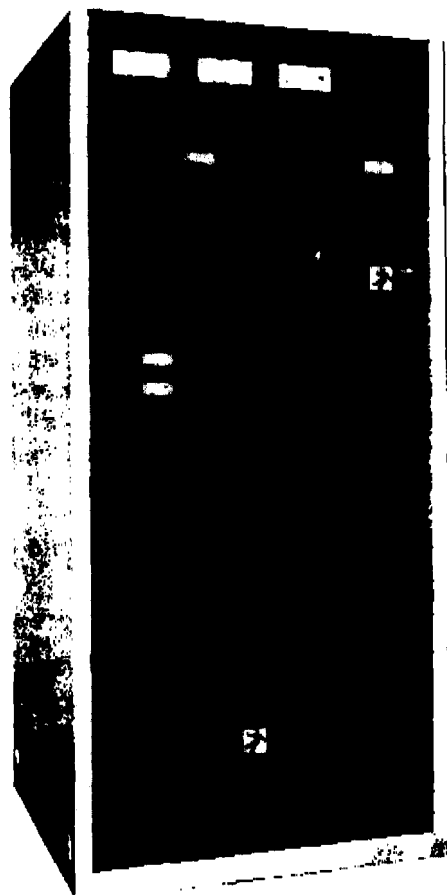
20 Q I would like to turn your attention to copies of
21 some bank records that were turned over in document
22 production. I have one item referencing your account,

ATTACHMENT 2

TRANSMITTERS, FM

HARRIS HT 3.5/5/7/10FM

3.5 kW THROUGH 10 kW FM TRANSMITTERS



HARRIS HT 10FM

Power levels:

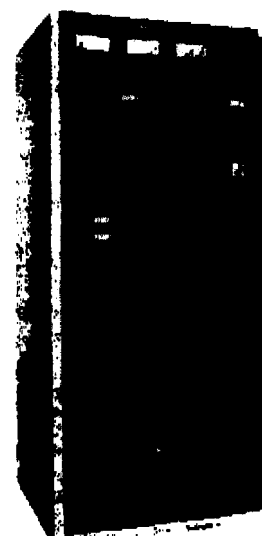
HT 3.5FM, 800 W - 4 kW
HT 5FM, 1.5 kW - 5 kW
HT 7FM, 3 kW - 8 kW
HT 10FM, 5 kW - 10 kW

KEY BENEFITS:

- Features single tube design with a long-life, high efficiency tetrode operating in a wide-band, quarter-wave cavity.
- Single phase power on the HT 3.5FM and HT 5FM; HT 7FM and HT 10FM available in three phase or single phase models.
- THE-1 FM exciter delivers super-clean signals; monaural, composite and SCA subcarrier inputs standard.
- RF patch-around capability provides continued on-air operation at reduced power in emergencies.
- Front-panel block diagram facilitates monitoring; LED indicators show circuit status in each major functional stage and have fault memory in case of power failure.
- Modular design ensures easy access during maintenance.
- Standard features include automatic AC restart, automatic power control, proportional VSWR foldback and full remote control interface.



HARRIS HT 3.5FM



HARRIS HT 5FM



HARRIS HT 7FM

HT 3.5/5/7/10FM SPECIFICATIONS

GENERAL

FREQUENCY RANGE

87.5 to 108 MHz in 50 kHz steps. Tuned to single frequency.

EXCITATION

Harris THE-1 High Power FM Exciter.

TYPE OF MODULATION

Direct carrier frequency modulation (DCFM).

MODULATION CAPABILITY

±200 kHz.

RF LOAD IMPEDANCE

50 ohms.

RF OUTPUT TERMINATION

HT 3.5FM/HT 5FM: 1 5/8" EIA flange, female.

HT 7FM/HT 10FM: 3 1/8" EIA flange, female.

PA MATCHING RANGE

HT 3.5/5FM: 2:1 VSWR, maximum for full output power; automatic power reduction into high VSWRs.

HT 7/10FM: 1:7 VSWR, maximum for full output power; automatic power reduction into high VSWRs.

RF HARMONIC/SPURIOUS OUTPUT

Suppression meets or exceeds FCC/DOC/CCIR specifications.

AC INPUT POWER

HT 3.5/HT5FM: 197-251 VAC, 50/60 Hz, 1 phase, 2-wire.

HT 7FM: 197-251 VAC, 50/60 Hz, 1 phase, 2-wire. Optional: 197-230 VAC, 50/60 Hz, 3 phase, 3-wire closed delta or 360-415 VAC 4-wire WYE.

HT 10FM: 197-230 VAC, 50/60 Hz, 3 phase, 3-wire closed delta or 360-415 VAC 4-wire WYE. Optional: 197-230 VAC, 50/60 Hz, 1 phase, 2-wire.

POWER CONSUMPTION

HT 3.5FM: 7.5 kW typical at 4 kW RF output.

HT 5FM: 8.9 kW typical at 5 kW RF output.

HT 7FM: 13.5 kW typical at 8 kW output.

HT 10FM: 15.7 kW typical at 10 kW output.

AMBIENT TEMPERATURE

-20°C to +50°C at sea level; derated 2°C/1000 ft. altitude.

MAXIMUM ALTITUDE

10,000 feet at 60 Hz; 7,500 feet at 50 Hz.

MAXIMUM HUMIDITY

To 95% non-condensing.

AIR REQUIREMENTS

400 CFM at 60 Hz; 350 CFM at 50 Hz. No back pressure.

CABINET SIZE

33" (84 cm) W x 34" (99 cm) D x 72" (183 cm) H.

WEIGHT/VOLUME

HT 3.5FM: 880 lbs./46.7 cubic feet, domestic packed.

HT 5FM: 1025 lbs./46.7 cubic feet, domestic packed.

HT 7FM: 1050 lbs./46.7 cubic feet, domestic packed.

HT 10FM: 1125 lbs./46.7 cubic feet, domestic packed.

Please see Page 105 for information on Standard Wideband Composite Operation; Standard Monaural Operation, and Standard SCA Input.



IN CANADA CALL 800-268-6817

Specifications subject to change or revision.

ATTACHMENT 3



September 15, 1993

Mr. Dan Alpert
1250 Connecticut Avenue, N.W.
7th Floor
Washington, DC 20036

Dear Mr. Alpert:

In reply to your telephone and fax inquiries of 9/14/93, I have been in contact with our FM Sales Engineer, who offered the following:

The (2) 15kW emergency standby generators offered for our Class A 6kW proposal have been sized to back up ALL equipment at both the transmitter and studio sites. If a 5kW generator were used at the studio site, no more than perhaps a console and emergency lighting could be maintained. The generators which we have offered will probably NOT back up the luxury of air conditioning, but would be sufficient to allow a station to keep all of their equipment on the air during a power outage.

Included is more detail regarding the Kohler generators which we are suggesting. Please contact me again if I can provide you with additional information or assistance.

Sincerely,

A handwritten signature in cursive script that reads 'Lynda Baker'.

Lynda Baker
Senior Sales Administrator
North America Radio Sales Administration

enc

copy

Ratings and Performance

Model Series	Voltage Code	Voltage	Amps.	Phase	Hz	Generator Model	Continuous Standby Ratings, kW/kVA Diesel	RATINGS: All models are continuous standby rated. Unit will operate at this rating for the duration of any power outage. All single phase units are rated at 1.0 power factor. Availability is subject to change without notice. Kohler Co. reserves the right to change the design or specifications without notice and without any obligation or liability whatsoever. Availability can be determined by contacting your local Kohler Co. Distributor.
15RMOY	61	120/240	62.5	1	60		15/15	
15RMOY	21	120	125.0	1	60		15/15	

Deration Factors

Maximum altitude before gen. set derating - ft (m)	1000(305)	Maximum intake air temp. before gen. set derating - °F (°C)	85(29)
Altitude deration factor - % per 1000 ft. (305 m)	3	Temp. deration factor - % per 10°F (5.5°C)	2.5

Application Data

Engine Specifications		60 Hz	Cooling System		60 Hz
Manufacturer		MWM	Total inlet air requirement		
Type		D327-2 4-Cycle	CFM (m³/min.)		700(19.8)
Cylinder arrangement (number, inline, V, etc.)		2 In-Line	Exhaust System		
Displacement - cu. in. (cc)		114.6(1876)	Exhaust flow at rated kW - cfm (m³/min.)		125(3.54)
Bore and stroke - in. (mm)		3.94(100) x 4.72(120)	Exhaust temp at rated kW, dry exhaust - °F (°C)		878(470)
Compression ratio		18:1	Maximum allowable back pressure - in. Hg (kPa)		5.5(18.6)
Piston speed - ft/min. (m/sec.)		1416(7.2)	Exhaust outlet size at hook-up - in. (mm)		2(51)
Bearings main: number type		3	Engine Electrical System		
Rated rpm		1800	Battery charging alternator ground (negative/positive)		N/A Negative
Max. power at rated rpm - hp (kW)		25.8(19.2)	Volts		12
Cylinder head material		Aluminum Alloy	Ampero rating		37
Piston type and material		Flat Topped Aluminum Alloy	Stator motor rated voltage		12
Crankshaft material		Dropped Forged Steel	Minimum recommended battery for 0°F/cold cranking performance (CCA)		460
Valves material			Quantity		One
Governor, type, make/model		EP/RSY Mechanical Flyweight	Voltage		12
Frequency regulation no-load to full load steady state		3 Nominal/5 Maximum ±0.5%	Rolling current @ 32°F		
Air cleaner type - all models		Oil Bath			
Lubricating System			Operation Requirements		60 Hz
Oil pan capacity - qts. (L)		5(4.73)	Combustion Air - cfm (m³/min.)		53(1.5)
Oil filter - (quantity, type)		One, Full Flow			
Mounting Factors			Fuel Consumption -		
Maximum mounting angle - front or rear up degrees		15			
Fuel System					
Fuel supply line					
Min. i.d. in. (mm)		1/4(6.2)			
Max. lift of engine driven fuel pump ft. (m)		4(1.22)			
Fuel prime pump		Manual			

Power Boost Generator

Specifications

Manufacturer	Kohler
Output reconnectible	120-120/240
Number of leads	4-Reconnectable
Generator type	Rotating Field
Voltage regulator	Power Boost
Insulation — NEMA	
MG1-1.66	
Material	Class F
Temperature rise	Class F
Bearing, number, type	1, ball
Coupling	Flexible Disc
Amortisseur windings	Full
Voltage regulation	
no load to full load —%	± 2% Maximum
One step load acceptance	
% of rating per NFPA-110	100
Peak motor starting kVA	25

- Generator is designed and built within NEMA, IEEE and ANSI standards for temperature rise.
- Static excited.
- Skewed rotor for smooth voltage wave form.
- Self-ventilated, drip-proof construction.
- Vacuum impregnated epoxy varnish — Fungus resistant per MIL-I-24092
- Sustains short circuit current at 300% of rated current up to 10 sec.
- Battery Charging Winding — 10 Ampere.

Standard Controller Features

Relay Controller

- Panel lamps (2)
- High-Engine-Temp. safety shut-down and lamp (red)*
- Low oil pressure safety shut-down and lamp (red)*
- Overspeed safety shut-down and lamp (red)*
- Over-Crank safety shut-down and lamp (red)*
- Run-Off/Reset-Auto switch (engine start) — Local/Remote two-wire

* common lamp

Standard Features

- High temperature cut-out
- Battery cables
- Wet type air cleaner
- Vibration isolation
- Mounting base, stationary applications
- Overspeed cut-out
- Automotive cranking
- Oil bath air cleaner
- Overcranking protection
- Operating instructions

Controller Accessories

- ☐ Meter Kit — includes
 - AC voltmeter
 - Ammeter
 - Frequency meter
 - Running time meter
 - Battery charging ammeter
 - Water temperature gauge
 - Oil pressure gauge
- ☐ Line circuit breaker — 70 Amp., 240 Volt
140 Amp., 120 Volt
- ☐ Duplex receptacle

Accessories and Options

Fuel System

- ☐ Fuel transfer tank with pump
- ☐ Flexible fuel line
- ☐ Auxillary fuel pump, 12 Volt

Exhaust System

- ☐ Residential exhaust silencer
- ☐ Industrial exhaust silencer
- ☐ Critical exhaust silencer
- ☐ Flexible exhaust connector, stainless steel

Engine Electrical System

- ☐ Battery 12 volt, cold cranking performance 380 amperes
- ☐ Battery rack
- ☐ Battery charger, trickle-type
- ☐ Battery charger, equalize/float-type

Generator Set

- ☐ Export boxing
- ☐ CSA approval

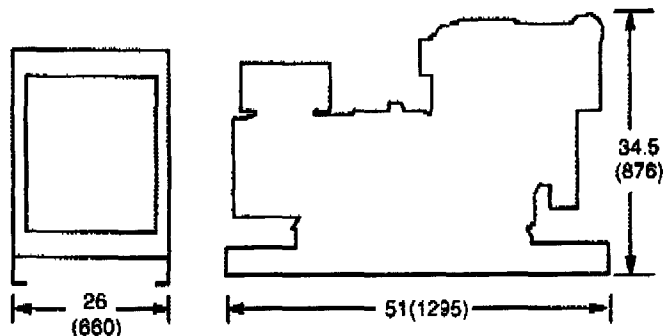
Cooling System

- ☐ Air vent cooling

WEIGHTS AND DIMENSIONS

Overall Size: L x W x H — in. (mm) 51 x 26 x 34.5
(1295 x 660 x 876)

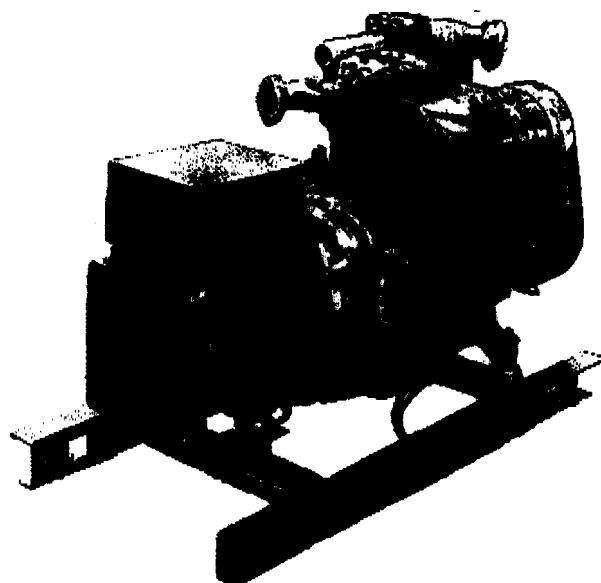
Weight — lb. (kg) 965 (437)



NOTE: This drawing is provided for reference only and is not to be used in planning installation. Contact your local distributor for more detailed information.

KOHLER[®] GENERATORS **15RMOY**

- Residential and commercial standby generator powered by air-cooled diesel engine.
- Kohler Power Boost™ systems are employed and proven in a variety of applications worldwide.
- Sustained short circuit capability maintains output long enough to permit selective breaker tripping.
- Isolated auxiliary winding and exclusive voltage regulator provide outstanding motor starting as well as consistent voltage regulation for today's sophisticated electronic appliances.



KOHLER

ATTACHMENT 4

PLC

Priority Leasing Corporation

4210 Spicewood Springs Road • Suite 203 • Austin, Texas 78759
512 • 345-5298 800 • 999-9546 FAX 512 • 345-8650

DATE: September 15, 1993
TO: Dan Alpert
FROM: Cathie Hayden, ext 135
SUBJ: Blank Lease

VIA FAX

Mr. Alpert:

The following lease copies illustrate a "standard" lease that would be used for an equipment lease. We have placed an 'X' where individual information would be shown. The lease document, along with the Schedule A (itemized with specific equipment) is industry standard and accepted by most underwriters.

I hope this is of assistance to you. Please call me if you have any other questions.



<input checked="" type="checkbox"/> LESSOR	
--	--

<input checked="" type="checkbox"/> FULL LEGAL NAME AND ADDRESS OF LESSEE	SUPPLIER OF EQUIPMENT (COMPLETE ADDRESS)
JOINTLY AND SEVERALLY RESPONSIBLE	

TYPE OF COMMERCE	<input checked="" type="checkbox"/>
------------------	-------------------------------------

EQUIPMENT LOCATION IF DIFFERENT	STREET ADDRESS	CITY	COUNTY	STATE	ZIP
<input checked="" type="checkbox"/>					
TERMS	AMOUNT OF EACH PAYMENT (PLUS SALES TAX, IF APPLICABLE)	MONTHLY OTHER/SPECIFY	TERM OF LEASE (NO. OF MONTHS)	NO. OF PAYMENTS	SECURITY DEPOSIT
<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

TERMS AND CONDITIONS OF LEASE

1. **LEASE.** Lessee hereby leases from Lessor, and Lessor leases to Lessee, the personal property described above, together with any replacement parts, additions, repairs or accessories now or hereafter incorporated in or affixed to it (hereinafter referred to as the "Equipment").

2. **ACCEPTANCE OF EQUIPMENT.** Lessee agrees to inspect the Equipment and to execute an Acknowledgement and Acceptance of Equipment by Lessee notice, as provided by Lessor, after the Equipment has been delivered and after Lessee is satisfied that the Equipment is satisfactory in every respect. Lessee hereby authorizes Lessor to insert in this Lease serial numbers or other identifying data with respect to the Equipment.

3. **DISCLAIMER OF WARRANTIES AND CLAIMS; LIMITATION OF REMEDIES.** THERE ARE NO WARRANTIES BY OR ON BEHALF OF LESSOR. Lessee acknowledges and agrees by his signature below as follows:

- (a) LESSOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED AS TO THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE, ITS DESIGN, ITS CAPACITY, ITS QUALITY, OR WITH RESPECT TO ANY CHARACTERISTICS OF THE EQUIPMENT;
- (b) Lessee has fully inspected the Equipment which it has requested Lessor to acquire and lease to Lessee, and the Equipment is in good condition and to Lessee's complete satisfaction;
- (c) Lessee leases the Equipment "as is" and with all faults;
- (d) Lessee specifically acknowledges that the Equipment is leased to Lessee solely for commercial or business purposes and not for personal, family, household, or agricultural purposes;
- (e) If the Equipment is not properly installed, does not operate as represented or warranted by the supplier or manufacturer, or is unsatisfactory for any reason, regardless of cause or consequence, Lessee's only remedy, if any, shall be against the supplier or manufacturer of the Equipment and not against Lessor;
- (f) Provided Lessee is not in default under this Lease, Lessor assigns to Lessee any warranties made by the supplier or the manufacturer of the Equipment;
- (g) LESSEE SHALL HAVE NO REMEDY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES AGAINST LESSOR; and
- (h) NO DEFECT, DAMAGE, OR UNFITNESS OF THE EQUIPMENT FOR ANY PURPOSE SHALL RELIEVE LESSEE OF THE OBLIGATION TO PAY RENT OR RELIEVE LESSEE OF ANY OTHER OBLIGATION UNDER THIS LEASE.

The parties have specifically negotiated and agreed to the foregoing paragraph.

INITIALS

4. **STATUTORY FINANCE LEASE.** Lessee agrees and acknowledges that it is the intent of both parties to this Lease that it qualify as a statutory finance lease under Article 2A of the Uniform Commercial Code. Lessee acknowledges and agrees that Lessee has selected both: (1) the Equipment; and (2) the supplier from whom Lessor is to purchase the Equipment. Lessee acknowledges that Lessor has not participated in any way in Lessee's selection of the Equipment or of the supplier, and Lessor has not selected, manufactured, or supplied the Equipment.

LESSEE IS ADVISED THAT IT MAY HAVE RIGHTS UNDER THE CONTRACT EVIDENCING THE LESSOR'S PURCHASE OF THE EQUIPMENT FROM THE SUPPLIER CHOSEN BY LESSEE AND THAT LESSEE SHOULD CONTACT THE SUPPLIER OF THE EQUIPMENT FOR A DESCRIPTION OF ANY SUCH RIGHTS.

5. **ASSIGNMENT BY LESSEE PROHIBITED.** WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE SHALL NOT ASSIGN THIS LEASE OR SUBLEASE THE EQUIPMENT OR ANY INTEREST THEREIN, OR PLEDGE OR TRANSFER THIS LEASE, OR OTHERWISE DISPOSE OF THE EQUIPMENT COVERED HEREBY.

6. **RENTAL PAYMENTS.** Lessee agrees to pay the total rent equal to the "Amount of Each Payment" multiplied by the number of payments specified in "No. of Payments." Payments will be made in advance and periodically as specified in "Terms" above. Payments shall be made by Lessee at Lessor's address set forth above, or as otherwise directed by Lessor. Lessee shall not abate, set off, deduct any amount, or reduce any payment for any reason. The first payment shall be due on the date of acceptance of the Equipment by Lessee, and subsequent payments shall be due on the same day of each succeeding month throughout the term of the Lease.

- (a) THIS LEASE IS NOT CANCELABLE OR TERMINABLE BY LESSEE.
- (b) SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE A PART OF THIS LEASE.
- (c) LESSEE UNDERSTANDS AND ACKNOWLEDGES THAT NO BROKER OR SUPPLIER, NOR ANY SALESMAN, BROKER, OR AGENT OF ANY BROKER OR SUPPLIER, IS AN AGENT OF LESSOR. NO BROKER OR SUPPLIER, NOR ANY SALESMAN, BROKER, OR AGENT OF ANY BROKER OR SUPPLIER, IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS LEASE, AND NO REPRESENTATION AS TO THE EQUIPMENT OR ANY OTHER MATTER BY THE BROKER OR SUPPLIER, NOR ANY SALESMAN, BROKER, OR AGENT OF ANY BROKER OR SUPPLIER, SHALL IN ANY WAY AFFECT LESSEE'S DUTY TO PAY THE RENTALS AND TO PERFORM LESSEE'S OBLIGATIONS SET FORTH IN THIS LEASE.

7. **CHOICE OF LAW.** This Lease shall not be effective until signed by Lessor at its principal office listed above. This Lease shall be considered to have been made in the state of Lessor's principal place of business listed above and shall be interpreted in accordance with the laws and regulations of the state of Lessor's principal place of business.

Lessee agrees to jurisdiction in the state of Lessor's principal place of business listed above in any action, suit or proceeding regarding this Lease, and concedes that it, and each of them, transacted business in the state of Lessor's principal place of business listed above by entering into this Lease. In the event of any legal action with regard to this lease or the equipment covered hereby, Lessee agrees that venue may be laid in the County of Lessor's principal place of business.

LESSEE: ☒

LESSOR: ☒

DATE

DATE

DATE

LESSOR: X

LEASE NO: _____

DATE OF LEASE: _____

This Guaranty Agreement made and entered into this _____ day of _____, 19____ by _____
(hereinafter referred to collectively as "Guarantor"), in favor of X _____ (hereinafter referred to as "Lessor").

X WHEREAS, it is contemplated that Lessor may enter into a lease and/or other related agreements (hereinafter collectively "Lease") with _____
(hereinafter collectively "Lessee"); and,

WHEREAS, Guarantor has an interest, financial or otherwise, in Lessee, and it is to the benefit of Guarantor that Lessor enter into the Lease with Lessee, and Guarantor has read the proposed Lease in full and finds the terms of said Lease acceptable, and in recognition that Lessor would be unwilling to enter into the Lease without the Guaranty hereinafter set forth, and in recognition of Lessor's reliance upon the Guaranty in entering into the Lease;

NOW, THEREFORE, in order to induce Lessor to enter into the Lease, Guarantor, jointly and severally, unconditionally guarantees the faithful and full performance by Lessee of all terms and conditions of the Lease. In the event of default by Lessee, or failure to faithfully perform any of the terms or conditions required of Lessee under the Lease, or in the event of failure of Lessee to make any or all payments of money required of it under the Lease, Guarantor unconditionally promises to pay to Lessor, in lawful money of the United States, all sums at any time due and unpaid under the Lease, plus costs of collection, including reasonable attorney fees with or without trial, and upon appeal and review.

The obligations of Guarantor hereunder are joint and several and are independent of the obligations of Lessee under the Lease, and a separate action or actions may be brought against Guarantor, whether action is brought against Lessee or whether Lessee be joined in any action or actions, the liability of Guarantor hereunder being primary. Guarantor hereby waives the benefit of any suretyship defenses affecting its liability hereunder or the enforcement hereof.

Guarantor authorizes Lessor, without notice or demand, and without affecting Guarantor's liability hereunder, from time to time to renew, extend, accelerate, or otherwise change the payment terms or other terms of the Lease or any part thereof. Lessor may, without notice, assign this Guaranty in whole or in part.

Guarantor hereby waives any right to require Lessor to: (a) proceed against Lessee; (b) proceed against or exhaust any security held by Lessor; or (c) pursue any other remedy in Lessor's power. Guarantor waives any defense arising by reason of any defense of Lessee, or by reason of the cessation, from any cause whatsoever, of the liability of Lessee under the Lease. Guarantor waives any and all demands for performance, notices of nonperformance or default, and notices of cancellation or forfeiture. Lessor may apply all proceeds received from Lessee or others to such part of Lessee's indebtedness as Lessor may deem appropriate without consulting Guarantor and without prejudice to or in any way limiting or lessening the liability of Guarantor under this Guaranty.

If Lessee is a corporation, the undersigned warrant and represent that they are stockholders, directors or officers and/or are financially or otherwise interested in Lessee, and, if married, their marital communities are so interested.

This Guaranty shall not be affected or discharged by the death of the undersigned, but shall bind Guarantor's heirs and personal representatives, and shall inure to the benefit of any successors or assigns of Lessor.

This instrument constitutes the entire agreement between Lessor and Guarantor. No oral or written representation not contained herein shall in any way affect this Guaranty, which shall not be modified except by the parties in writing. Waiver by Lessor of any provision hereof in one instance shall not constitute a waiver as to any other instance.

**IMPORTANT: THIS AGREEMENT CREATES SPECIFIC LEGAL OBLIGATIONS. DO NOT SIGN IT
UNTIL YOU HAVE FULLY READ IT. BY SIGNING YOU COMPLETELY AGREE TO ITS TERMS.**

IN WITNESS WHEREOF, the undersigned Guarantor(s) has/have executed this Guaranty this _____ day of _____, 19____

GUARANTOR: X

NAME _____

Home Address _____

City _____ State _____ Zip _____

WITNESS _____

GUARANTOR: _____

NAME _____

Home Address _____

City _____ State _____ Zip _____

WITNESS _____

LESSOR: X

LEASE NUMBER _____

DATE OF LEASE _____

LESSEE: X

ACKNOWLEDGEMENT AND ACCEPTANCE OF EQUIPMENT BY LESSEE

Lessee hereby acknowledges that the Equipment described above has been received in good condition and repair, has been properly installed, tested, and inspected, and is operating satisfactorily in all respects for all of Lessee's intended uses and purposes. Lessee hereby accepts unconditionally and irrevocably the Equipment.

By signature below, Lessee specifically authorizes and requests Lessor to make payment to the supplier of the Equipment. Lessee agrees that said Equipment has not been delivered, installed, or accepted on a trial basis.

WITH THE DELIVERY OF THIS DOCUMENT TO LESSOR, LESSEE ACKNOWLEDGES AND AGREES THAT LESSEE'S OBLIGATIONS TO LESSOR BECOME ABSOLUTE AND IRREVOCABLE AND LESSEE SHALL BE FOREVER ESTOPPED FROM DENYING THE TRUTHFULNESS OF THE REPRESENTATIONS MADE IN THIS DOCUMENT.

DATE OF ACCEPTANCE:

LESSEE:

**IMPORTANT: THIS DOCUMENT HAS
LEGAL AND FINANCIAL CONSEQUENCES
TO YOU. DO NOT SIGN THIS DOCUMENT
UNTIL YOU HAVE ACTUALLY RECEIVED
ALL OF THE EQUIPMENT AND ARE
COMPLETELY SATISFIED WITH IT.**

I HEREBY AUTHORIZE _____, _____
TO ORALLY VERIFY MY/OUR ACCEPTANCE OF THE
ABOVE REFERENCED EQUIPMENT IN MY ABSENCE. TITLE

This Schedule A is attached to and made a part of Lease No. _____

by and between _____ as Lessee
and _____ as Lessor,

and constitutes a true and accurate description of the equipment and
suppliers of equipment pursuant to this lease.

1	N017-0217	1625 Quality Control FT-IR Spectrometer
1	N017-0125	Keyboard Adapter Cable
1	N930-2702	Cell-10MM Pair Rect. Quartz
1	N930-2641	Square Cuvette Holder
1	N930-2706	Cell-50MM Pair Rect. Quartz
1	N930-2620	Holder, Shaped, Cyl Cells

Lessee: _____

By: _____

Date: _____

President

UNIFORM COMMERCIAL CODE - FINANCING STATEMENT - FORM UCC-1

REORDER FROM
Registered, Inc.
514 PINE ST.
MINNAPOLIS, MN 55402
(612) 421-1712

INSTRUCTIONS:

1. PLEASE TYPE this form. Fold only along perforation for mailing.
2. Remove Secured Party and Debtor copies and send other 3 copies with interleaved carbon paper to the filing officer. Enclose filing fee.
3. If the space provided for any item(s) on the form is inadequate the item(s) should be continued on additional sheets, preferably 5" x 8" or 8" x 10". Only one copy of such additional sheets need be presented to the filing officer with a set of three copies of the financing statement. Long schedules of collateral, indentures, etc., may be on any size paper that is convenient for the secured party. Indicate the number of additional sheets attached.
4. If collateral is crops or goods which are or are to become fixtures, describe generally the real estate and give name of record owner.
5. When a copy of the security agreement is used as a financing statement, it is requested that it be accompanied by a completed but unsigned set of these forms, without extra fee.
6. At the time of original filing, filing officer should return third copy as an acknowledgement. At a later time, secured party may date and sign Termination Legend and use third copy as a Termination Statement.

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:

3. Maturity date (if any):

1. Debtor(s) (Last Name First) and address(es)

2. Secured Party(ies) and address(es)

For Filing Officer (Date, Time, Number, and Filing Office)

4. This financing statement covers the following types (or items) of property:

5. Assignee(s) of Secured Party and Address(es)

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check ☒ if so)

Filed with:

☐ already subject to a security interest in another jurisdiction when it was brought into this state.

☐ which is proceeds of the original collateral described above in which a security interest was perfected:

Check ☒ if covered: ☐ Proceeds of Collateral are also covered. ☐ Products of Collateral are also covered. No. of additional Sheets presented:

By: _____
Signature(s) of Debtor(s)

By: _____
Signature(s) of Secured Party(ies)

(1) Filing Officer Copy - Alphabetical

STANDARD FORM - FORM UCC-1.